

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BELLEAU TECHNOLOGIES, LLC,

Plaintiff,

18 Civ. 06319 (AJN)

v.

JOEALLENPRO LIMITED, a foreign corporation;
and JOE ALLEN, as an individual,

Defendants.

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DECLARATION OF JEREMY S. SADKIN

JEREMY S. SADKIN, declares under penalty of perjury and pursuant to 28 U.S.C.

§ 1746:

1. I am an attorney duly admitted to practice law in the State of New York. I am also an employee of plaintiff Belleau Technologies, LLC (“Belleau”), and my duties encompass providing legal counsel and legal services to the plaintiff. Unless otherwise specified, I have personal knowledge of the facts and circumstances described herein.

2. I submit this Declaration in support of Belleau’s Motion for a Temporary Restraining Order and a Preliminary Injunction.

3. On April 24, 2018, the United States Patent and Trademark Office (the “PTO”) duly and legally issued U.S. Patent No. 9,953,646 (“the ‘646 Patent”), entitled “Method and System for Dynamic Speech Recognition and Tracking of Prewritten Script” after a full and fair examination. The ‘646 Patent was filed on September 2, 2015. A true and correct copy of the ‘646 Patent is attached hereto as Exhibit 1.

4. Belleau possesses the exclusive right under the ‘646 Patent to make, use, and sell

products embodying the patented invention, as well as the right to sue and to seek an injunction for infringement of its exclusive rights.

5. Belleau and the defendants in this case, JoeAllenPro Limited and Joe Allen (collectively, “Defendants”) are direct competitors vying for the business of the same group of customers. Based on my review of Defendants’ websites and the App Store, Defendants currently offer four teleprompter apps to the public through the Apple App Store, including “Teleprompter Premium,” “Video Teleprompter,” “Teleprompter Lite,” and “Video Teleprompter Lite.” These four applications are in direct competition with Belleau’s applications under the PromptSmart brand name. Teleprompter Premium was developed by Mr. Allen personally, and has been offered to the global app marketplace through his individual developer account since at least 2015. A true and correct copy of the joeallenpro.com blog post entitled “What Does It Cost to Run a \$2K/week App Business” is attached hereto as Exhibit 2.¹

6. Based on my review of Defendants’ websites and the App Store, AutoPrompter would represent Defendants’ fifth teleprompter app. Defendants also offer two other mobile applications, including “Soundboard Studio” and “Green Screen Pro.”

7. As a way of monitoring the health of Belleau’s software assets, I conduct a daily search of the Apple App Store for “teleprompter” on iPhones and iPads to ensure that PromptSmart Pro, Belleau’s flagship application (“Pro”), remains as the first result of this search. More often than not, Pro is the number one result on both devices. Within the United States, Pro benefits from having more customer reviews and higher quality customer reviews and ratings (Pro: 581 ratings, 4.6/5 avg) than competing apps, including Defendants’ Teleprompter Premium

¹ As noted below, this blog post was removed by Defendants. It was previously available at the following URL: <https://joeallenpro.com/what-does-it-cost-to-run-a-2kweek-app-business/>.

app (113 ratings, 4.1/5 avg) and Video Teleprompter Premium app (16 ratings, 2.9 avg).² Pro is also well-rated in other English-speaking countries around the globe.

8. PromptSmart’s consistently strong performance in Apple’s search positioning – which is an ever-changing, competitive process – as well as the popularity of the PromptSmart brand with current customers are two powerful factors (among others) that, over time, have established Belleau as the market leader over competitors, including Defendants and their current teleprompter app offerings.

9. Belleau’s success is largely attributable to the usefulness of Belleau’s invented scrolling method and to the exclusivity afforded by Belleau’s patent. In its current form, Belleau’s ‘646 Patent is embodied in numerous software applications and goes by the trade name “VoiceTrack.” VoiceTrack is a core feature of Belleau’s PromptSmart applications and is a strong differentiator in the minds of consumers. *See* Ex. 3.

10. PromptSmart products revolutionized teleprompting because they are the first (and currently the only) speech-recognition-based teleprompters containing “smart” scrolling that scrolls text by following along in real time as someone speaks a pre-written script. Before Belleau invented this unconventional scrolling method, the available methods were limited to

² These data are current as of July 10, 2018 at 9:00 AM EDT. All ratings and reviews are subject to change by the reviewer. Moreover, Belleau does not coach or solicit reviewers. A true and correct copy of five independently submitted reviews from satisfied PromptSmart customers in the past year alone is attached as Exhibit 3. These customers clearly, succinctly, and credibly establish the value and usefulness of Belleau’s invention for video content producers and public speakers. PromptSmart is “bullet-proof!” *Id.* “I shoot videos for my YouTube channel . . . [and PromptSmart] software works great . . . I love it I love it.” *Id.* Another reviewer said that he uses PromptSmart “on a daily basis, and [has] done so for over two years. It is truly a godsend. I could not do my job without it!” *Id.* Another reviewer stated that Belleau’s VoiceTrack feature “makes [PromptSmart] worth every dollar . . . I have used a lot of prompting apps and this is the best I have used in more than a decade of struggling with half-baked apps at ALL price ranges.” *Id.* A church pastor said “I love, Love, LOVE this app! . . . I highly recommend this app to anyone who wants an effortless public speaking app!” *Id.*

less desirable alternatives, such as (1) manual scrolling by a person other than the speaker, (2) a constant, pre-set scrolling speed, or (3) using external devices or foot pedals to scroll the display. PromptSmart's VoiceTrack technology, therefore, is innovative because it was the first ever software feature that automated the scrolling of teleprompters. Belleau's invention solves a technical problem in the field of teleprompting, the benefits of which spill over into several other activities, including, but not limited to, television, film, news gathering, audiobooks, internet video production, and public speaking because it makes the scrolling of any pre-written text "smart" by automatically discerning whether a speaker is uttering the content of the text or something else entirely and then scrolling or stopping the text accordingly on a visual display.

11. Belleau has always represented that VoiceTrack is a technological advancement in teleprompter scrolling that is protected by underlying intellectual property rights. Moreover, Belleau's invention has grown the consumer market for teleprompter software generally because the invention makes such software products inherently more useful, more affordable, and more accessible to the average person. *See* Ex. 3.

12. Because of the popularity of Belleau's invention, Belleau has built up substantial goodwill and a valuable, positive reputation. The best demonstration of Belleau's goodwill lies in the fact that – without any solicitation or active marketing whatsoever – a large, global media company based in New York approached Belleau with interest in exploring whether Belleau could build a new teleprompter software application that embodies Belleau's patented scrolling method. Belleau was officially vetted by the company, remains engaged with that company, and has already embarked on this large and impactful development project.

13. Apparently seeking to bridge a competitive gap, and without Belleau's authority or consent, Defendants developed a copycat AutoPrompter application that purports to do what

only Belleau's patented VoiceTrack system currently does, which is, in essence, to listen "to your voice as you speak, then accurately scroll your script as you're reading . . . [and] you can even digress from your script and AutoPrompter will politely wait for you to get back on track." True and correct copies of the AutoPrompter's beta testing instructions and the AutoPrompter's pre-order product page are attached hereto as Exhibit 4. Defendants' description of how AutoPrompter's "Smart Voice Engine" functions is identical in substance to the way PromptSmart markets VoiceTrack to consumers. Because defendants have copied Belleau's marketing about VoiceTrack to describe a knock-off feature present in AutoPrompter, Defendants are encouraging confusion in the minds of new and prospective customers as to who the true market leader and innovator is.

14. According to Defendants' own admissions on the AutoPrompter Apple App Store product page and the AutoPrompter product website (autoprompter.com), the core feature of AutoPrompter is the "Smart Voice Engine" that can "listen to you reading your script and intelligently scroll in real time." True and correct copies of the AutoPrompter Apple App Store product page and the AutoPrompter product website are attached hereto as Exhibit 5. This "Smart Voice Engine" is an obvious and unauthorized knock-off of Belleau's patented VoiceTrack scrolling method.

15. On or about April 2, 2018, Defendant Joe Allen sent an electronic mail to a distribution list containing the subject header "Invitation to Beta Test a New Teleprompter App," the body of which explained that the app was called "AutoPrompter . . . a truly versatile professional Teleprompter app featuring smart voice recognition scrolling." Defendants required prospective testers to apply and be approved prior to participation in the testing round. The application asked respondents to note whether they had ever used two of Belleau's PromptSmart

applications (which both embody the ‘646 Patent). True and correct copies of this invitation email and the application web page are attached as Exhibit 6.

16. It is customary in the mobile app industry to send test software to prospective users as a way of collecting valuable feedback prior to releasing that software to the general public. As a boon for third-party developers, Apple, Inc. (“Apple”) provides a convenient and robust platform called “TestFlight” to gather and distribute test software to nearly anyone in the world with an iOS device. Apple also engages in substantial oversight to review software internally prior to the release of third-party software in its own App Store marketplace. After importing the AutoPrompter application into the United States by uploading the app to Apple, a U.S.-domiciled company, Defendants used TestFlight to distribute beta versions of the AutoPrompter product to users that reside in the United States.

17. I have personally downloaded and used the AutoPrompter application in New York. Through my use I observed that AutoPrompter’s voice recognition feature does attempt to emulate what Belleau’s patented VoiceTrack system currently does (reserving all judgment regarding the relative quality of AutoPrompter’s “Smart Voice Engine” and PromptSmart’s VoiceTrack feature).

18. I informed Belleau’s patent prosecutor Kevin Keener of Defendants’ actions and arranged for Mr. Keener to send a cease and desist letter, dated April 23, 2018, which notified Defendants that the AutoPrompter application constituted, *inter alia*, a willful and direct infringement of Belleau’s ‘646 Patent. A true and correct copy of the April 23, 2018 letter is attached hereto as Exhibit 7.

19. In a reply letter, dated May 10, 2018, Defendant Joe Allen replied on his own letterhead and, short of actually denying his obvious acts of infringement, merely declined to

admit patent infringement (as compared to “categorically” denying the separately alleged copyright infringement). A true and correct copy of the May 10, 2018 letter is attached hereto as Exhibit 8.

20. Defendants’ May 10, 2018 letter made no representation about the AutoPrompter app being outside the scope of Belleau’s patent.

21. Computer implemented coding languages express logic and rules in an interconnected web of functions and commands, each of which involve a high degree of known interchangeability. Accordingly, it would be very easy for a motivated and unscrupulous software developer to ostensibly claim that pirated software is “different” from a patented product when in reality it is a *de facto* and unauthorized copy of a protected invention. Indeed, the specification of the ‘646 Patent itself asserts that Belleau’s invented scrolling method “is capable of other different embodiments and its several details are capable of modifications in various obvious aspects all without departing from the scope of the invention.” Ex. 1.

22. By all appearances, AutoPrompter’s “Smart Voice Engine” is a blatant and obvious copy of Belleau’s patented “Method and System for Dynamic Speech Recognition and Tracking of Prewritten Script” (i.e., VoiceTrack) – a fact that is easily discernable by even the most cursory review of the plain language of the ‘646 Patent, the commercial embodiments of that patent (i.e., Belleau’s PromptSmart products), Defendants’ statements and admissions about AutoPrompter, and my own usage of the AutoPrompter product.

23. Through my personal use of the AutoPrompter app, it was clear that the AutoPrompter displays text on a screen; receives a vocal input which is processed by speech-recognition; compares, and then matches against a pre-written text provided by a user; and then based on the result of that comparison, scrolls said text in a graphical user interface (or keeps it

stationary). The last step in the process, the smart scrolling in a graphical interface, is a crucial piece that makes Belleau's invention innovative and useful to consumers because it gives them control of the scrolling of a teleprompter using their voice.

24. This unique scrolling method did not exist until Belleau invented it.

25. Defendants nevertheless remain intent on releasing the infringing AutoPrompter product worldwide in the iOS App Store, using Apple (based in the US) as an intermediary for each and every prospective transaction. The AutoPrompter testing phase has concluded and the AutoPrompter is currently available for pre-order, and according to a July 4, 2018 announcement, is slated for release to the public on July 18, 2018. *See* Ex. 5 (the AutoPrompter application product page on the Apple App Store showing a release date of July 18, 2018).

26. This announcement further informs consumers that the AutoPrompter app will have an optional AutoPrompter Pro upgrade in the app, which is offered for sale for \$34.99 per year or \$11.99 for three months. The standard version of the app is throttled in such a way to be nearly useless to users without a "Pro" upgrade.

27. Based on the beta version I examined, the AutoPrompter release will include the "Smart Voice Engine." *See also* Ex. 5. This "Engine" is the essential component of the AutoPrompter product, which fact is consistent with Mr. Allen's stated preference to make applications that are specifically tailored to "solve one of [the] problems . . . your audience cares about . . . The more specific you are, the more you'll matter to the people you're trying to help." A true and correct copy of the joeallenpro.com blog post entitled "How to Make Your App Launch Matter, and Sell Hundreds of Units on Launch Day" is attached as Exhibit 9.³

³ Three days after receiving a second cease and desist letter from Belleau and enclosing a draft of Belleau's complaint (which relied, *inter alia*, upon information contained within this blog post) on July 5, 2018, Defendants attempted to spoliage this evidence (among others) by removing the

28. Defendants have and continue to instruct and encourage consumers to use the infringing AutoPrompter app through marketing and email activities and through instructions directing customers on the AutoPrompter's download and use. Defendants have also marketed and will continue to market the AutoPrompter app through coordinated campaigns through the App Store, through promotional videos on YouTube, through Allen's personal twitter account (@joeallenpro), through the autoprompter.com website, and through email promotions. True and correct copies of examples of consumers' use of the AutoPrompter (exhibited through Twitter and YouTube posts) and examples of Defendants' marketing materials are attached hereto as Exhibit 11. *See also* Ex. 4 (the AutoPrompter testing instructions).

29. By all appearances, the specific problem Defendants purport to solve with the AutoPrompter app is to provide customers with a teleprompter app product that scrolls along with the user's voice in real time (i.e., a "smart voice recognition teleprompter app."). This is consistent with the tagline Defendants have written about AutoPrompter in the Apple App Store ("Voice Recognition Teleprompter") and with the header at the top of the autoprompter.com product website ("The Smart Voice Recognition Teleprompter App").

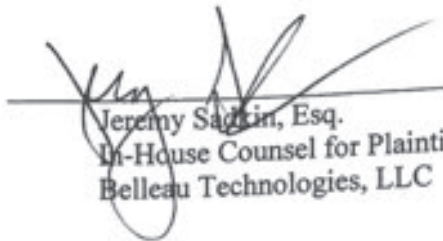
30. Moreover, Defendants have demonstrated a pattern of dilatory, unjustifiable, and unlawful conduct by deliberately pirating Belleau's intellectual property, by ignoring Belleau's valid demands to cease and desist, and by attempting to spoliage evidence. Such a pattern of evasiveness and misconduct demonstrates a lack of forthrightness and a willingness to hide the truth that I believe will continue throughout this litigation.

post from the joeallenpro.com website. At least four blog posts with damaging admissions were wrongfully removed by Defendants, each willful breaches of Defendants' ongoing duty to preserve evidence after having been notified of the prospect of this litigation in April of 2018. True and correct copies of these removed blog posts and the subsequent dead links are attached hereto as Exhibit 10.

31. Belleau will surely be irreparably harmed without the emergency injunctive relief requested herein. Belleau's good faith attempts to resolve this matter privately have been unreasonably rejected or ignored. Defendants' pattern of willful disregard for Belleau's rights will only continue unless this Court intervenes.

I declare under penalty of perjury that the foregoing is true and correct.

New York, New York
July 17, 2018



Jeremy Saggin, Esq.
In-House Counsel for Plaintiff
Belleau Technologies, LLC